

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION

CLARENCE CLAUSELL,

Plaintiff,

vs.

MICHAEL J. ASTRUE,  
Commissioner of  
Social Security,

Defendant.

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Civil Action 06-00663-KD-B

ORDER

After due and proper consideration of all portions of this file deemed relevant to the issues raised, and there having been no objections filed, the Report and Recommendation of the Magistrate Judge made pursuant to 28 U.S.C. § 636(b)(1)(B) and dated April 27, 2007 is hereby **ADOPTED** as the opinion of this Court.

Accordingly, for good cause shown, it is **ORDERED** that Defendant's unopposed Motion and Memorandum for Entry of Judgment Pursuant to Sentence Four of 42 U.S.C. § 405(g) with Remand of the Cause to the Defendant (Doc. 13) be and hereby is **GRANTED**, and that this action is **REMANDED** to the Social Security Administration pursuant to sentence four of 42 U.S.C. § 405(g) so that: 1) the Appeals Council will vacate the February 21, 2006 decision and direct the Administrative Law Judge to conduct a hearing in accordance with 20 C.F.R. §§ 404.944, 416.1429, at which time the

Plaintiff will have the opportunity to testify; and 2) the Administrative Law Judge will fully and accurately address treating physician Dr. Nimityongskul's opinions regarding Plaintiff's capacity for completing a full eight-hour work day and reconcile it with the requirement of Social Security Regulation 96-8p that a claimant must be capable of work on "a regular and continuing basis . . . 8 hours per day, 5 days per week." (Id. at 1-2).

This remand, pursuant to sentence four of Section 405(g), makes Plaintiff a prevailing party for purposes of the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412. Shalala v. Schaefer, 509 U.S. 292 (1993).

**DONE** this **22<sup>nd</sup>** day of **May, 2007**.

/s/ Kristi K. DuBose  
**KRISTI K. DuBOSE**  
**UNITED STATES DISTRICT JUDGE**